Supreme Court, U.S.
FILED

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No. _____

In The

Supreme Court of the United States

October Term, 1995

ROGER F. QUISENBERRY,

Petitioner,

v.

COUNTY COLLECTION SERVICES, INC.,
A Florida Corporation, and ROBERT LAZAR,

Respondents.

On Petition For Writ Of Certiorari
To The Fourth District Court Of Appeal Of Florida

PETITION FOR WRIT OF CERTIORARI

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50 pp

QUESTION PRESENTED

Whether due process requires that a property owner receive personal service of a final judgment assessing money owed on a lien and mandating a foreclosure sale before his or her property is sold for unpaid code violation penalties?

PARTIES TO THE PROCEEDING

The parties to the proceedings below were Petitioner, Roger F. Quisenberry, and Respondents, Robert Lazar, and County Collection Services, Inc., a Florida corporation. The same parties are before this Court.

TABLE OF CONTENTS

Page

QUESTION PRESENTED i

PARTIES TO THE PROCEEDING ii

TABLE OF CONTENTS iii

TABLE OF AUTHORITIES iv

OPINIONS BELOW 1

JURISDICTION 1

CONSTITUTIONAL PROVISIONS INVOLVED 1

STATUTES INVOLVED 2

STATEMENT OF THE CASE 2

SUMMARY OF THE ARGUMENT 3

ARGUMENT 4

I. IN BALANCING THE INTERESTS OF THE STATE WITH THAT OF PROPERTY OWNERS, SERVICE OF A FINAL JUDGMENT UPON A PROPERTY OWNER'S ATTORNEY ONLY DOES NOT ADEQUATELY PROTECT THE INTERESTS OF PROPERTY OWNERS 5

A. THE PRIVATE INTEREST AFFECTED BY STATE ACTION 6

B. THE RISK OF AN ERRONEOUS DEPRIVATION OF A PROPERTY INTEREST BY FAILURE TO SERVE PROPERTY OWNERS PERSONALLY CREATES A SUBSTANTIAL RISK TO PROPERTY OWNERS 7

C. THE STATE'S INTERESTS 9

II. THE FLORIDA COURT ERRED IN NOT FOLLOWING *MULLANE* AND OTHER PRECEDENT OF THIS COURT 9

CONCLUSION 11

TABLE OF AUTHORITIES

Page

CASES

Frank v. Maryland, 359 U.S. 360 (1959) 9

Fuentes v. Shevin, 407 U.S. 67 (1972) 4, 9

G.M. Leasing Corp. v. United States, 429 U.S. 338 (1977) 9

Grannis v. Ordean, 234 U.S. 385 (1914) 4

Greene v. Lindsey, 456 U.S. 444 (1982) 7, 8, 11

Loretto v. Teleprompter Manhattan CATV Corp., 458 U.S. 419 (1982) 5

Marchetti v. United States, 390 U.S. 39 (1968) 9

Mathews v. Eldridge, 424 U.S. 319 (1976) 5

Memphis Light, Gas & Water Division v. Craft, 436 U.S. 1 (1978) 4

Mennonite Board of Missions v. Adams, 462 U.S. 791 (1983) 6

Milliken v. Meyer, 311 U.S. 457 (1940) 4

Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306 (1950) 4, 9, 10

Penn Central Transp. Co. v. New York, 458 U.S. 104 (1978) 5

Schroeder v. City of New York, 371 U.S. 208 (1962) 10

Tulsa Collection Services v. Pope, 485 U.S. 478 (1978) 8

Walker v. Hutchinson, 352 U.S. 112 (1956) 10

TABLE OF AUTHORITIES – Continued

Page

CONSTITUTIONAL PROVISIONS

United States Constitution, Fifth Amendment... 1, 2, 11

United States Constitution, Fourteenth Amendment 1, 2, 11

STATUTES

28 U.S.C. § 1257 1

OPINIONS BELOW

The Circuit Court of the Fifteenth Judicial Circuit in and for Palm Beach County, Florida denied Defendant/Petitioner's Motion to Set Aside Foreclosure Sale and/or Motion for Relief from Judgment, App. at 2a and Defendant/Respondent's Motion for Clarification, App. at 9a. The Fourth District Court of Appeal for the State of Florida affirmed the Circuit Court, *per curiam*, on May 15, 1996. App. 1a.

Quisenberry timely filed this Petition for Writ of Certiorari.

JURISDICTION

Petitioner invokes the jurisdiction of this Court pursuant to 28 U.S.C. § 1257. He seeks review of the Order of the Fourth District Court of Appeal for the State of Florida, filed on May 15, 1996. App. at 1a.

CONSTITUTIONAL PROVISIONS INVOLVED

FIFTH AMENDMENT:

> No person shall be . . . deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

FOURTEENTH AMENDMENT: (DUE PROCESS) § 1:

> No state shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or

property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATUTES INVOLVED

None.

STATEMENT OF THE CASE

This case presents the question of whether due process requires that a property owner receive personal notice of a final judgment assessing money owed on a lien and mandating a foreclosure sale before his or her property is sold for unpaid code violation penalties.

Petitioner Roger F. Quisenberry ("Quisenberry") owned a parcel of land located in Hypoluxo Village in Palm Beach County, Florida ("Hypoluxo Village"). App. at 13a. The County Codes Enforcement Board ("Board") imposed a lien on the Hypoluxo Village property for violations including alleged failure to secure exterior railings. App. at 17a-19a. By contract with the Board, Plaintiff/Respondent County Collection Services, Inc. ("CCSI") sued Quisenberry for enforcement of the lien. App. at 20a. On May 16, 1994, the Circuit Court found that Quisenberry owed CCSI seven-hundred and fifty dollars ($750.00) on the lien, plus further interest, costs, and attorney's fees to be determined by the court at a later date. App. at 25a. On August 2, 1994, the court issued final judgment against Quisenberry, assessing the

total amount he owed CCSI to be seven thousand, three-hundred and thirty-four dollars and ninety-one cents ($7,334.91). App. at 27a. The judgment also provided that if Quisenberry did not pay CCSI $7,334.91, Quisenberry's property would be sold on August 25, 1994 at 11:00 A.M. App. at 29a.[1] On August 25, 1994, the Hypoluxo Village property was sold to Appellee/Respondent Robert Lazar.

Quisenberry received no copy of the final judgment or the Notice of Sale from the Court. App. at 15a. The court provided a copy of its judgment only to Quisenberry's lawyer, H. Bryant Sims ("Sims"). App. at 15a. Sims' only attempt to notify Quisenberry about the judgment was to send Quisenberry a copy of the judgment and an accompanying letter in an envelope postmarked on August 11, 1994. App. at 15a. However, because Quisenberry was out of town from August 12, 1994 through September 6, 1994, he did not receive notice that he had to pay $7,334.91 to CCSI to redeem the Hypoluxo Village property until after it had been sold. App. at 15a.

SUMMARY OF THE ARGUMENT

Due process requires that in any proceeding which is to be accorded finality, a party in interest must be provided notice reasonably calculated, under all the circumstances, to apprise interested parties of the action and afford them the opportunity to be heard. The mode of

[1] Other than setting the date and time of the foreclosure sale, the court did not set forth any specific time at which Quisenberry was to pay CCSI. App. at 29a.

service used in this case, service by mail only upon Quisenberry's lawyer, failed to satisfy this constitutional requirement. At a minimum, notice of a final judgment assessing money owed on a property lien and mandating a foreclosure sale must be given directly to the property owner, either by certified mail or personal service.

ARGUMENT

In *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306 (1950), this Court held that in all actions, whether *in rem* or *in personam*, notice must be reasonably calculated to reach those parties whose names and addresses are known and that constructive notice by publication is not sufficient:

> An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them the opportunity to present their objections.

Id. at 314; *Memphis Light, Gas & Water Division v. Craft*, 436 U.S. 1 (1978); *Milliken v. Meyer*, 311 U.S. 457 (1940); *Grannis v. Ordean*, 234 U.S. 385 (1914).

In *Fuentes v. Shevin*, 407 U.S. 67, 80 (1972), this Court further expanded on the principle set forth in *Mullane*:

> The constitutional right to be heard is a basic aspect of the duty of government to follow a fair process of decisionmaking when it acts to deprive a person of his possessions. The purpose of this requirement is not only to ensure

> abstract fair play to the individual. Its purpose, more particularly, is to protect his use and possession of property from arbitrary encroachment – to minimize substantively unfair or mistaken deprivations of property, a danger that is especially great when the State seizes goods simply upon the application of and for the benefit of a private party.

In this case Quisenberry did not receive notice that the Hypoluxo Village property was being sold. Neither the court nor CCSI sent him a copy of the final judgment, nor did either attempt to serve notice of the judgment and impending sale personally. Notice of the sale was sent only to Quisenberry's lawyer and did not reach Quisenberry until after his property was sold. Therefore, the issuance of the final judgment resulted in a taking of Quisenberry's property without adequate notice and without compensation. It is fundamentally unfair and a violation of Quisenberry's due process rights to be deprived of property in such a manner. *Loretto v. Teleprompter Manhattan CATV Corp.*, 458 U.S. 419 (1982); *Penn Central Transp. Co. v. New York City*, 438 U.S. 104 (1978).

I. IN BALANCING THE INTERESTS OF THE STATE WITH THAT OF PROPERTY OWNERS, SERVICE OF A FINAL JUDGMENT UPON A PROPERTY OWNER'S ATTORNEY ONLY DOES NOT ADEQUATELY PROTECT THE INTERESTS OF PROPERTY OWNERS

In *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976), this Court formulated the test to determine whether certain procedures comport with due process.

> More precisely, our prior decisions indicate that identification of the specific dictates of due process generally requires consideration of three distinct factors: First, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and finally, the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail.

Providing a copy of the judgment only to Quisenberry's lawyer was not reasonably calculated, under all the circumstances, to give Quisenberry notice that his property would be sold if he did not pay code violation penalties by a specific date. Therefore the notice used in this case fails to satisfy due process.

A. THE PRIVATE INTEREST AFFECTED BY STATE ACTION

The private interest at stake in when a court orders a foreclosure sale is the property interest of the record title holder. Quisenberry, the record titleholder of the Hypoluxo Village property, was an interested party in the sale of the property, *Mennonite Board of Missions v. Adams*, 462 U.S. 791 (1983), and as such he must be provided adequate notice of the date and time his property would be sold if he failed to pay the money owed on the lien.

B. THE RISK OF AN ERRONEOUS DEPRIVATION OF A PROPERTY INTEREST BY FAILURE TO SERVE PROPERTY OWNERS PERSONALLY CREATES A SUBSTANTIAL RISK TO PROPERTY OWNERS

A court's failure to provide personal notice to property owners of an impending sale of their property creates a substantial risk to property owners. Here, the court did not serve Quisenberry by any means with notice of the amount owed on the lien and the impending sale of his property. At the very least, due process requires courts[2] to serve an individual property owner with notice, by certified mail, that his or her property will be sold if a judgment is not satisfied. Notifying only the property owner's lawyer, without more, creates an unreasonable risk that notice of the sale will not reach the owner in sufficient time for the owner to satisfy the judgment and preserve the property interest. A thirty-two cent expenditure for a stamp substantially reduces the risk of erroneous deprivation.

While it is true that one would reasonably have expected Quisenberry's lawyer to tell his client immediately of the lien assessment and impending sale, reliance on this assumption does not exempt the form of service used in this case from due process requirements. Even where the notice provided is based on a reasonable assumption, it fails to satisfy due process where it results in a "failure to provide actual notice." *Greene v. Lindsey,*

---

[2] Requiring either that the court furnish this notice or that the person benefiting from the deprivation do so would adequately protect the property owner's interest.

456 U.S. 444, 453 (1982). In *Greene*, this Court struck down a state statute which permitted service of process by posting in forcible entry and detainer actions. *Id.* at 456. In so ruling, the Court acknowledged the reasonableness of the State's assumption that a property owner will see a notice that has been posted on his or her door, upon return to the property:

> It is, of course, reasonable to assume that a property owner will maintain superintendence of his property, and to presume that actions physically disturbing his holdings will come to his attention . . . But whatever the efficacy of the posting in many cases, it is clear that, in this case, merely posting notice on an apartment door does not satisfy standards of due process. In a significant number of instances, reliance on posting pursuant to the provisions of [the statute] results in a failure to provide actual notice to the tenant concerned.

Id. at 452-453. While Florida's assumption that notice of an impending property sale will be forwarded to a property owner by his or her lawyer in time to preserve notice to the owner may be reasonable, it results too often in a complete "failure to provide actual notice" to the property owner. Therefore, as in *Greene*, the notice fails to meet due process requirements.

The additional or substitute procedural safeguard of sending notice of an impending sale to a property owner at his or her residence by certified mail, and requiring receipt of same, is a minimal burden to the State, but will provide significant protection to the property owner. As this Court stated in *Tulsa Collection Services v. Pope*, 485 U.S. 478, 489-490 (1988): "[a]ctual notice need not be

inefficient or burdensome. We have repeatedly recognized that mail service is an inexpensive and efficient mechanism that is reasonably calculated to provide actual notice." Similarly, requiring that personal service be properly effectuated, or that notice be posted at the owner's residence in a manner which would reasonably provide notice of the application, is also a minimal burden on the State and would provide adequate protection. If only one of these procedural safeguards were employed, both the interests of the property owner and the State would be better served. The State would receive the money owed and the property owner would be able to protect his or her property interest.

C. THE STATE'S INTEREST

Florida has an interest at stake in collecting unpaid code violation penalties. However, a State's power to collect money is not unbridled.

In *Marchetti v. United States*, 390 U.S. 39 (1968), this Court, while recognizing the power of government to tax, also acknowledged that the Constitution places limitations on the exercise of that power. *Id.* at 58. Indeed, it was the concern for abuses of this very power which led to the adoption of the Due Process Clause. *See Fuentes v. Shevin*, 407 U.S. 67 (1972); *Frank v. Maryland*, 359 U.S. 360, 378 (1959); *G.M. Leasing Corp. v. United States*, 429 U.S. 338 (1977).

II. THE FLORIDA COURT ERRED IN NOT FOLLOWING *MULLANE* AND OTHER PRECEDENT OF THIS COURT

The Florida court failed to follow this Court's decision in *Mullane v. Central Hanover Bank & Trust Co.*, 339

U.S. 306 (1950), and its progeny, in that it sanctioned a form of notice that is not given directly to a property owner.

In *Mullane,* this Court invalidated a New York statute which authorized notice, by publication, to beneficiaries of a common trust informing them about an annual judicial settlement of the common trust account. Notice by publication was held to be inadequate because "under the circumstances it [was] not reasonably calculated to reach those who could easily be informed by other means at hand." *Id.* at 319. The general rule set forth in *Mullane* was that:

> [e]xceptions in the name of necessity do not sweep away the rule that within the limits of practicability, notice must be such as is reasonably calculated to reach interested parties. Where the names and post office addresses of those affected by a proceeding are at hand, the reasons disappear for resort to means less likely than the mails to apprise them of its pendency.

Id. at 318.

Indeed, even where notice is given directly to the interested party, it is unconstitutional where it is not reasonably calculated to alert the party that his or her property interests are at stake. Following *Mullane,* constructive notice of condemnation proceedings has been recognized as inadequate to notify a landowner whose identity was known to the City, *Walker v. Hutchinson,* 352 U.S. 112 (1956); publication and posting were held insufficient to apprise property owners of condemnation proceedings when his name and address were readily ascertainable from public records, *Schroeder v. City of New*

York, 371 U.S. 208 (1962); and posting of a summons on a apartment door was found inadequate to provide notice in forcible entry and detainer actions, *Greene v. Lindsey, supra.*

In this case, holding that Quisenberry received notice simply because a copy of the judgment was sent to his lawyer, does not satisfy the minimal requirements of due process provided by the Fifth and Fourteenth Amendments.

Based on this Court's reasoning in the above cited case law, the decision of the Fourth District Court of Appeal of Florida to affirm the trial court's denial of Quisenberry's Motion for Reconsideration and/or Motion for Relief from Judgment should be reversed.

CONCLUSION

Based on the foregoing, Petitioner respectfully requests this Court grant the Petition for Writ of Certiorari.

Respectfully submitted,

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Fla. Bar No. 229466

APPENDIX

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT JANUARY TERM 1996

ROGER F. QUISENBERRY,

Appellant,

v.

COUNTY COLLECTION SERVICES, INC., a Florida corporation, and ROBERT LAZAR,

Appellees.

NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING MOTION AND IF FILED, DISPOSED OF.

CASE NO. 95-0854

Decision filed May 15, 1996

Appeal from the Circuit Court for the Fifteenth Judicial Circuit, Palm Beach County; Harold J. Cohen, Judge; L.T. Case No. CL 93-1433 AH.

Richard G. Bartmon of Law Offices of Bartmon & Bartmon, Boca Raton, for appellant.

Richard T. Stierer and Colin M. Cameron of Law Offices of Richard T. Stierer, West Palm Beach, for Appellee-County Collection Services, Inc.

Steven Sloane Newburgh of Steven Sloane Newburgh, P.A. West Palm Beach, for Appellee-Robert Lazar.

PER CURIAM.

AFFIRMED.

GLICKSTEIN, WARNER and POLEN, JJ., concur.

IN THE CIRCUIT COURT OF THE 15TH JUDICIAL CIRCUIT, IN AND FOR PALM BEACH COUNTY, FLORIDA

CASE NO. CL 93-1433 AH

COUNTY COLLECTION SERVICES, INC., a Florida corporation,

Plaintiff,

vs.

ROGER QUISENBERRY,

Defendant.

_____/

ORDER ON DEFENDANT'S MOTION TO SET ASIDE FORECLOSURE SALE

THIS CAUSE, having come before the Court for hearing on the Defendant's Motion to Set Aside Foreclosure Sale, on Thursday, February 9, 1995, the Court, having heard argument of counsel, testimony of witnesses, and having reviewed the evidence presented, and being otherwise advised in the Premises, it is, hereby,

ORDERED AND ADJUDGED that said Motion is and the same is hereby DENIED.

DONE AND ORDERED, in Chambers, West Palm Beach, Palm Beach County, Florida, this ____ day of February, 1995.

_____

Circuit Court Judge

Copies furnished to:

See Attached Service List

Service List:

Steven Sloane Newburgh, Esquire
1800 Australian Avenue South
Suite 205
West Palm Beach, FL 33409

Kim Marie St. James, Esquire
1645 Palm Beach Lakes Boulevard
Suite 600
West Palm Beach, FL 33401

Richard T. Stierer, Esquire
224 Datura Street
Suite 1401
West Palm Beach, FL 33401

H. Bryant Sims, Esquire
7301 South Dixie Highway
West Palm Beach, FL 33405

IN THE CIRCUIT COURT OF THE 15TH JUDICIAL CIRCUIT, IN AND FOR PALM BEACH COUNTY, FLORIDA

CIVIL DIVISION

CASE NO. CL 93-1433 AH

COUNTY COLLECTION SERVICES, INC., a Florida corporation,

Plaintiff,

vs.

ROGER F. QUISENBERRY,

Defendant.

_____/

MOTION TO SET ASIDE FORECLOSURE SALE AND/OR MOTION FOR RELIEF FROM JUDGMENT

The Defendant, ROGER F. QUISENBERRY, by and through his undersigned counsel respectfully requests the Court to set aside the foreclosure sale and/or for relief from judgment pursuant to Florida Rule of Civil Procedure 1.540 and as grounds therefore states:

1. That this action was brought as foreclosure of a lien by the Plaintiff arising out of alleged violations.

2. That out of the $7,334.71 claimed, at a final evidentiary hearing, the Court determined that the plaintiff would have judgment against ROGER F. QUISENBERRY on the alleged violations in the amount of $750.00.

3. That the issues of attorney's fees and costs were reserved.

4. That ROGER F. QUISENBERRY was represented by H. Bryant Sims, Esquire as attorney of record for him from the inception of this lawsuit.

5. That after the ruling by the Court as to the $750.00 judgment, ROGER F. QUISENBERRY (see Affidavit of ROGER F. QUISENBERRY attached hereto and incorporated herein as Exhibit "A", herein Affidavit), telephoned H. Bryant Sims on a regular basis to find out when he was supposed to pay this $750.00 he owed.

6. That he was continually told by Mr. Sims that it was not time to pay the $750.00 yet and to wait until he was told to.

7. That ROGER F. QUISENBERRY was aware that during this time period, H. Bryant Sims was negotiating with attorneys for Plaintiff as to the amount of attorney's fees.

8. That evidently, on August 2, 1994 a hearing was held on the Plaintiff's Motion for Attorney's Fees and Costs.

9. On August 2, 1994 a Final Judgment was signed. This Final Judgment had a blank which was filled in, and ROGER F. QUISENBERRY is [sic] does not know as to what date the blank was filled in, setting a foreclosure sale on the lien for August 25, 1994.

10. On August 6th or 7th, ROGER F. QUISENBERRY called H. Bryant Sims' office to again inquire when he was supposed to pay the amount owed to Plaintiff. He spoke with H. Bryant Sims' secretary, Evelyn, and advised her that he was checking to determine when he was [sic] pay, and that he was going out of town for a few

weeks. Evelyn advised ROGER F. QUISENBERRY that there had been no action on the file and nothing had happened.

11. That ROGER F. QUISENBERRY was out of town from August 12, 1994 to September 6, 1994 inclusive.

12. That when he returned to his home, ROGER F. QUISENBERRY received a call from his tenant informing him the property was sold, he then looked through his accumulated mail and found a letter and a copy of a judgment, copies of which are attached along with a copy of the envelope bearing the postage date stamp of August 11, 1994 as Exhibit "B". The letter which was sent by regular mail was from H. Bryant Sims to ROGER F. QUISENBERRY advising him of the sale date and the need to pay the amount to Plaintiff.

13. While ROGER F. QUINSEBERRY [sic] was out of town, he had a friend, Joseph Osterby (Affidavit of Joseph Osterby to be filed after the filing of this Motion) staying at his house to dog sit, house sit, and "trouble shoot" other properties that Mr. Quisenberry owns.

14. That Mr. Osterby continuously checked the messages on the home telephone answering machine and knew how to contact Mr. Quisenberry while he was out of town, and also Mr. Quisenberry called several times while he was away.

15. That at no time did Mr. Osterby receive any messages from H. Bryant Sims or his office advising of the foreclosure sale and the need to pay the money to avoid forfeiture of the property and the equity therein.

16. That as soon as he received the letter, he tried to contact H. Bryant Sims and was told by Evelyn that Mr. Sims was unavailable and out of town and that Evelyn did not know when or if he would call in.

17. That on September 8, 1994 in order to try to do something to fix this situation, ROGER F. QUISENBERRY delivered a letter to the Court requesting a rehearing, stamped by the Clerk on September 8, 1994.

18. That at all times hereto ROGER F. QUISENBERRY has been ready, willing and able to pay the $7,334.71 to redeem his property.

19. That the property is worth approximately $100,000.00 with encumbrances of approximately $25,000.00 leaving a net equity of approximately $75,000.00.

20. That the price the purchaser at the foreclosure sale paid for the house is $10,400.00 which was grossly inadequate.

21. That ROGER F. QUISENBERRY lost his property due to surprise, accident, and/or mistake imposed upon him.

22. It would be grossly inequitable to allow the purchaser at the foreclosure sale to take this property for the price of approximately $10,000.00. It would be a windfall to him and a gross inequity to ROGER F. QUISENBERRY.

23. The Defendant, ROGER F. QUISENBERRY will tender the amount of $7,334.71 to the Clerk of the Court forthwith. ROGER F. QUISENBERRY remains ready to pay all amounts required to redeem his property.

24. WHEREFORE, the Defendant, ROGER F. QUISENBERRY respectfully requests this Court for an Order setting aside the foreclosure and/or for relief from judgment as more specifically set forth above.

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to RICHARD T. STIERER, ESQUIRE, Attorney for Plaintiff, 224 Datura Street, Suite 1401, West Palm Beach, Florida 33401 and H. BRYANT SIMS, ESQUIRE, 7301 South Dixie Highway, West Palm Beach, Florida 33405 by U.S. Mail delivered this 12th day of September, 1994 and MR. ROBERT LaLAR, 356 Gulfview Road, Suite 609, North Palm Beach, Florida 33408 by hand delivery this 12th day of September, 1994.

KIM MARIE ST. JAMES, P.A.
1645 Palm Beach Lakes Boulevard
Suite 600
West Palm Beach, Florida 33401
(407) 478-1068

BY: /s/ Kim Marie St. James
KIM MARIE ST. JAMES, ESQUIRE

IN THE CIRCUIT COURT OF THE
15TH JUDICIAL CIRCUIT IN
AND FOR PALM BEACH
COUNTY, FLORIDA

CIVIL DIVISION

CASE NO.: CL 93-1433 AH

COUNTY COLLECTION
SERVICES, INC. a Florida
corporation,

Plaintiff,

vs.

ROGER F. QUISENBERRY,

Defendant.
_____/

MOTION FOR CLARIFICATION

The Defendant, ROGER QUISENBERRY, by and through the undersigned counsel, moves this Court for a clarification of its Order on Defendant's Motion to Set Aside Foreclosure Sale and as grounds further states:

1. The Motion to Set Aside Foreclosure Sale was heard by this Court in two sessions of evidentiary hearings.

2. The Court's Order on the Motion, signed on February 13, 1995, denied the Motion without making any findings of fact or of law.

3. Findings of fact and of law in this case are essential for the Defendant to pursue relief in this circumstance, including appellate review.

WHEREFORE, the Defendant, ROGER QUISENBERRY, respectfully requests this Court for clarification of the Court's Order on Defendant's Motion to Set Aside Foreclosure Sale, including findings of fact and of law, as more specifically set forth above.

I hereby certify that a copy of the foregoing has been sent by U. S. Mail on this 26TH day of February, 1995 to: STEVEN S. NEWBURGH, ESQUIRE, 1800 Australian Avenue South, Suite 205, West Palm Beach, Florida 33401 and RICHARD T. STIERER, ESQUIRE, 224 Datura Street, Suite 1401, West Palm Beach, Florida 33401.

KIM MARIE ST. JAMES, P.A.
1645 Palm Beach Lakes Boulevard
Suite 600
West Palm Beach, Florida 33401
(407) 478-1068

BY: /s/ Kim Marie St. James
KIM MARIE ST. JAMES, ESQUIRE
FLORIDA BAR NO.: 344397

IN THE CIRCUIT COURT OF THE
15TH JUDICIAL CIRCUIT IN
AND FOR PALM BEACH
COUNTY, FLORIDA

CIVIL DIVISION

CASE NO.: CL 93-1433 AH

COUNTY COLLECTION
SERVICES, INC. a Florida
corporation,

Plaintiff,

vs.

ROGER F. QUISENBERRY,

Defendant.
_____/

**ORDER ON DEFENDANT'S
MOTION FOR CLARIFICATION**

THIS CAUSE having come before the Court upon the Defendant's Motion for Clarification of the Court's Order on Defendant's Motion to Set Aside Foreclosure Sale, and after hearing argument of counsel, it is thereupon:

ORDERED AND ADJUDGED that the Defendant's Motion for Clarification of the Court's Order on Defendant's Motion to Set Aside Foreclosure Sale is Denied. The transcript will support the Court's ruling. The Court was required to and did rule on the credibility of witnesses.

DONE AND ORDERED in Chambers, West Palm Beach, Palm Beach County, Florida this 15th day of March, 1995.

/s/ [Illegible]
CIRCUIT COURT JUDGE

Copies Furnished:

KIM MARIE ST. JAMES, ESQUIRE, 1645 Palm Beach Lakes Boulevard, Suite 600, West Palm Beach, Florida

STEVEN S. NEWBURGH, ESQUIRE, 1800 Australian Avenue South, Suite 205, West Palm Beach, Florida 33401

RICHARD T. STIERER, ESQUIRE, 224 Datura Street, Suite 1401, West Palm Beach, Florida 33401

IN THE CIRCUIT COURT OF THE
15TH JUDICIAL CIRCUIT IN
AND FOR PALM BEACH
COUNTY, FLORIDA

CIVIL DIVISION

CASE NO.: CL 93-1433 AH

COUNTY COLLECTION
SERVICES, INC. a Florida
corporation,

Plaintiff,

vs.

ROGER F. QUISENBERRY,

Defendant.
_____/

AFFIDAVIT OF ROGER F. QUISENBERRY

STATE OF FLORIDA)
) ss
COUNTY OF PALM BEACH)

On this day before me, the undersigned officer, personally appeared, ROGER F. QUISENBERRY, who being duly sworn upon his oath, deposes and says:

1. My name is ROGER F. QUISENBERRY. I am the Defendant in Case No.: CL 93-1433 AH.

2. That I was the owner, until the certificate of title was issued of the property known as:

Lot 6, Block 43, Plat No. 2, HYPOLUXO VILLAGE, an unrecorded plat, being a part of

Section 6, Township 45 South, Range 43 East, and described by metes and bounds as follows:

The North 85 feet of the South 2030 feet of the West 130 feet of that property described in Deed Book 1122, Page 494, Palm Beach County Records, LESS the East 20 feet thereof for road purposes, and subject to easement for drainage over the West 20 feet thereof, the description of the property in Deed Book 1122, Page 494, being as follows:

Being at the Northeast corner of Section 6, Township 45 South, Range 43 East; thence South 0 10'40" West along the East line of said Section 6, a distance of 40 feet to point in the South right-of-way line of Lake Worth Drainage District Lateral No. 16, and the Point of Beginning; thence continue So. 0 10'40" West along the East line of said Section 6, a distance of 5303.57 feet to a point in the North right-of-way line of Hypoluxo Road as now laid out and in use, said point being 65 feet North of and which is parallel to and 65 feet North of and at right angles to the South line of said Section 6, a distance of 2717.19 feet to a point; thence No. 0 19'so" [sic] West, a distance of 2526.68 feet to a point; thence No. 67 28'30" East a distance of 200.28 feet to a point; thence North a distance of 2632.72 feet to a point in the South right-of-way line of L.W.D.D. Lateral No. 16; thence So. 89 46'20" E along the South right-of-way line of said Lateral No. 16, a distance of 31.85 feet to a point; thence So 89 59' East along the South right-of-way line of said Lateral No. 16, a distance of 2350.90 feet to the point of beginning.

3. That this property is worth approximately $100,000.00 with encumbrances totaling $25,000.00 with a net equity of approximately $75,000.00.

4. On August 6th or 7th, I called H. Bryant Sims' office to again inquire when I was supposed to pay the amount owed to Plaintiff. I spoke with H. Bryant Sims' secretary, Evelyn, and advised her that I was checking to determine when I was to pay, and that I was going out of town for a few weeks. Evelyn advised me that there had been no action on the file and nothing had happened.

5. That I was out of town from August 12, 1994 to September 6, 1994 inclusive.

6. On September 8, 1994 I received a call from my tenant informing me the property had been sold. I looked through my accumulated mail and found a letter and a copy of a judgment, copies of which are attached along with a copy of the envelope bearing the postage date stamp of August 11, 1994. The letter which was sent by regular mail was from H. Bryant Sims to myself advising me of the sale date and the need to pay the amount to Plaintiff.

7. While I was out of town, I had a friend, Joseph Osterby staying at my house to dog sit, house sit, and "trouble shoot" other properties that I own.

8. That Mr. Osterby continuously checked the messages on the home telephone answering machine and knew how to contact me while I was out of town, and I called several times while I was away.

9. That at no time did Mr. Osterby receive any messages from H. Bryant Sims or his office advising of the foreclosure sale and the need to pay the money to avoid forfeiture of the property and the equity therein.

10. That as soon as I received the call from my tenant on September 8, 1994, I tried to contact H. Bryant Sims and was told by Evelyn that Mr. Sims was unavailable and out of town until September 19, 1994, and the staff member did not know when or if he would call in.

11. That on September 8, 1994 in order to try to do something to fix this situation, I delivered a letter to the Court, stamped by the Clerk on September 8, 1994 (copy attached hereto as Exhibit "A").

12. That at all times hereto I have been ready, willing and able to pay the $7,334.71 to redeem my property.

FURTHER AFFIANT SAYETH NAUGHT.

DATED this 12th day of September, 1994.

/s/ Roger F. Quisenberry
ROGER F. QUISENBERRY

The foregoing instrument was acknowledged before me this 12th day of September, 1994 by ROGER F. QUISENBERRY, who [✓] is personally or [ ] has produced _ as identification and who has not taken an oath.

/s/ Linda Kyte Waddell
(Signature of Notary Public – State of Florida)

NOTARY PUBLIC
STATE OF FLORIDA
MY COMMISSION EXP.
MAY 29, 1995
BONDED THRU
GENERAL INS. UNO.

/s/ Linda Kyte Waddell
(Print Commissioned Name of Notary Public)

(NOTARIAL SEAL)

My Commission Expires:

Commission No.: CC113818

EXHIBIT "C"

ORDER
CODES ENFORCEMENT BOARD

To: Roger Quisenbury (CEB 89-1101)
5421 S. Flagler Drive
West Palm Beach, Florida 33405

RE: Violation of Section 404, 404.2, 404.6, 406.5 of the Palm Beach County Housing Code. Exterior railing not secured so as to be safe. Beams inside infested by termites. Loose boards on exterior of house, not weathertight. House needs extermination.

The Codes Enforcement Board has heard testimony at the Codes Enforcement Board hearing held October 4, 1989, without you being present, although you were notified of said hearing, and based on the evidence the Codes Enforcement Board enters the following FINDINGS OF FACT, CONCLUSIONS OF LAW, and ORDER:

FINDINGS OF FACT

1. The premises is 6617 Rigger Road.

2. The premises is zoned RS – Residential Single Family.

3. The above cited violation exist [sic] on the premises.

4. Mr. Quisenbury has been notified of the violation at least twice.

5. To this date the violation still exists.

CONCLUSIONS OF LAW

1. The premises is zoned RS.

2. The above cited code sections must be complied with.

ORDER

Pursuant to the authority granted in Section 6 of Ordinance 87-15, it is hereby ORDERED and ADJUDGED this 4th. day of October, 1989, that Mr. Quisenbury is in violation. Further, that he be granted 30 days to come into compliance with the code. A fine of $150.00 per day will be imposed for each day the violation continues to exist thereafter. And further, that should the violation not be corrected within the time specified the County is authorized to proceed with collection of any accumulated fines as set forth within Ordinance 87-15.

NOTE: It is the responsibility of the violator to notify the Code Enforcement Division at 471-3630 when compliance with this order is achieved. After compliance you have the right to request appearance before the Board to waive or modify any fines which may have accumulated. Such requests shall be made in writing to the Code Enforcement Division. You do have the right to appeal the action taken by the Board pursuant to Section 10 of Chapter 77-617.

DONE and ORDERED this 4th day of October, 1989.

/s/ Laurent B. VanCott
Laurent B. VanCott, Chairman

LBV:sw
Compliance date: November 3, 1989

ATTEST: /s/ JB Macapayag
Secretary

IN THE CIRCUIT COURT OF THE
FIFTEENTH JUDICIAL CIRCUIT,
IN AND FOR PALM BEACH COUNTY
FLORIDA.

CASE NO: 1433 AH

COUNTY COLLECTION SERVICES,
F.B.N. #078328
INC., a Florida Corporation,

Plaintiff,

vs. [Illegible Stamp]

ROGER F. QUISENBERRY,

Defendant.

_____/

COMPLAINT FOR FORECLOSURE OF LIEN

COMES NOW the Plaintiff, COUNTY COLLECTION SERVICES, INC., a Florida corporation, and sues the Defendant(s) ROGER F. QUISENBERRY, and alleges as follows:

1. This is an action to foreclose a Palm Beach County Codes Enforcement lien, pursuant to Chapter 162, Florida Statutes, and County Ordinance Nos. 87-15 and 88-20, on real property located in Palm Beach County, Florida.

2. COUNTY COLLECTION SERVICES, INC. is a Florida corporation.

3. Palm Beach County is a political subdivision of the State of Florida.

4. ROGER F. QUISENBERRY is an individual and is otherwise sui juris.

5. Defendant(s), ROGER F. QUISENBERRY, is the record title holder(s) of a parcel of real property located in Palm Beach County, Florida, by virtue of a Warranty Deed dated June 5, 1973 and recorded on September 13, 1973 in Official Record Book 2212, Page 1623 and described as follows:

> Lot 6, Block 43, Plat No. 2 HYPOLUXO VILLAGE, an unrecorded plat, being a part of Section 6, Township 45 South, Range 43 East, and described by metes and bounds as follows:
>
> The North 85 feet of the South 2030 feet of the West 130 feet of that property described in Deed Book 1122, page 494, Palm Beach County Records, LESS the East 20 feet thereof for road purposes, and Subject to easement for drainage over the West 20 feet thereof, the description of the property in Deed Book 1122, page 494, being as follows:
>
> Begin at the Northeast corner of Section 6, Township 45 South, Range 48 East; thence South 0°10'40" West along the East line of said Section 6, a distance of 40 feet to a point in the south right-of-way line of Lake Worth Drainage District Lateral No. 16, and the point of Beginning; thence continues So. 0°10'40" West along the East line of said Section 6, a distance of 5303.57 feet to a point in the North right-of-way line of Hypoluxo Road as now laid out and in use, said point being 65 feet North of and at right angles to the South line of said Section 6; thence So. 8°54'30" West along said North right-of-way line of Hypoluxo Road which is parallel to and 65

feet North of and at right angles to the South line of said Section 6, a distance of 2717.19 feet to a point; thence No. 0°19'30" West, a distance of 2526.68 feet to a point; thence No. 67°28'30" East a distance of 200.28 feet to a point; thence North a distance of 2632.72 feet to a point in the South right-of-way line of L.W.D.D. Lateral No. 16; thence So. 89°46'20" E along the South right-of-way line of said Lateral No. 16, a distance of 31.85 feet to a point; thence So. 89°59' East along the South right-of-way line of said Lateral No. 16, a distance of 2530.90 feet to the point of beginning

A copy of said Waranty Deed is attached hereto as Exhibit A.

6. That Defendant(s) ROGER F. QUISENBERRY was provided with written notice of hearing and that on or about October 4, 1989, a hearing was duly conducted pursuant to Chapter 162, Florida Statutes and County Codes Enforcement Board Ordinances Nos. 87-15 and 88-20, before the Palm Beach County Codes Enforcement Board. Following that hearing, an Order was entered, citing that Defendant(s) ROGER F. QUISENBERRY, had in fact violated the specified Code sections. Pursuant to said Order, the Defendant(s) were ordered to comply with the County Code within 30 days or a fine of $150.00 per day would be levied against the Defendant(s) and subject parcel.

7. Defendant(s) ROGER F. QUISENBERRY failed to comply with said Order as required therein and on or about January 11, 1990, a certified copy of the Codes Enforcement Board's Order was recorded in the Public Records of Palm Beach County, Florida, in Official Record

Book 6321, Page 43. A copy of said Claim of Lien is attached hereto together with a certified copy of the Codes Enforcement Board Order, as Exhibit B and C respectively.

8. By Resolution No. 92-289 the Board of County Commissioners of Palm Beach County has assigned said Lien to COUNTY COLLECTIONS SERVICES, INC. for collection purposes, and recorded same in Official Record Book 7314, Page 1384. A copy of the pertinent portions of said Resolution is attached as Exhibit D.

9. The Lien imposed by the Code Enforcement Board against Defendant(s) was in the amount of $6,900.00 Plaintiff has demanded payments for the same, but all demands have been refused. The fine continues to accrue.

10. COUNTY COLLECTION SERVICES, INC. has retained undersigned counsel to represent it in the foreclosure of this Lien, and agreed to pay a reasonable fee, therefore.

WHEREFORE, Plaintiff demands that an accounting of the sums due and owing Plaintiff in this cause, including principal, interest, costs, abstract charges, expenses, and attorneys fees for this suit, and upon such account that the Defendants be required to pay the said Plaintiff all sums of money found to be due and owing under the terms of said Claim of lien and upon failing to do so within the time provided, demands judgment foreclosing the Lien, and under direction of this Court, the property be ordered sold, and if the proceeds of the sale are

insufficient to pay Plaintiff's claim, a deficiency judgment be granted.

LAW OFFICES OF RICHARD T. STIERER
224 Datura St. Suite 1401
West Palm Beach, Fl. 33401
(407) 665-8401

BY: [Illegible]
RICHARD T. STIERER, Esquire
Florida Bar No. 078328
Attorney for County Collection Services, Inc.

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT OF FLORIDA, IN AND FOR PALM BEACH COUNTY. CIVIL ACTION.

CASE NO: CL 93-1433 AH

COUNTY COLLECTION SERVICES, INC., a Florida Corporation,

Plaintiff,

vs.

ROGER F. QUISENBERRY,

Defendant.

_____/

ORDER FOLLOWING NON-JURY TRIAL

THIS CAUSE came before the Court for a non-jury final hearing on May 5, 1994. The Plaintiff, COUNTY COLLECTION SERVICES, INC., a Florida corporation, was present and represented by Colin M. Cameron, Esq. and Richard T. Stierer, Esq.; the Defendant, ROGER F. QUISENBERRY was present and represented by H. Bryant Sims, Esq. Based upon the testimony and evidence presented, it is thereupon:

ORDERED AND ADJUDGED:

1. That Plaintiff, COUNTY COLLECTION SERVICES, INC., a Florida corporation, owns a lien upon certain real property owned by the Defendant, ROGER F. QUISENBERRY, in the principal amount of $750.00, as of November 19, 1989.

2. Plaintiff holds a lien for the said principal sum and such further interest, costs and attorney's fees as may be hereafter awarded, superior to any claim or estate of Defendant, ROGER F. QUISENBERRY, on the following described real property in Palm Beach County, Florida:

> Lot 6, Block 43 in Hypoluxo Village, Plat 2 property i.d. number 00-43-45-06-02-043-0060

3. Jurisdiction of this action is retained for determination of court costs, attorney fees and interest.

DONE AND ORDERED at West Palm Beach, Palm Beach County, Florida this the _____ day of May, 1994.

HAROLD J. COHEN
Circuit Court Judge

Copy Furnished:

RICHARD T. STIERER, ESQUIRE, Law Offices of Richard T. Stierer, Attorneys for County Collection Services, 224 Datura Street, Suite 1401, West Palm Beach, Florida 33401.

H. BRYANT SIMS, ESQUIRE, Attorney for Quisenberry, 7301 South Dixie Highway, West Palm Beach, Florida 33405

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT OF FLORIDA, IN AND FOR PALM BEACH COUNTY, CIVIL DIVISION.

CASE NO. CL 93-1433 AH

COUNTY COLLECTION SERVICES, INC., a Florida Corporation,

Plaintiff,

vs.

ROGER F. QUISENBERRY,

Defendant.

_____/

SUMMARY JUDGMENT FOR PLAINTIFF ON FORECLOSURE OF LIEN

This action was tried before the Court. On the evidence presented

IT IS ADJUDGED THAT:

1. Plaintiff, COUNTY COLLECTION SERVICES, INC., a Florida corporation, is due the following amounts under the lien sued on in this action:

Principal	$ 750.00	HJC
Interest through August 2, 1994	422.67	HJC
Costs herein taxed **illegible handwriting in original	1,162.24	HJC
Attorney's fee	5,000.00	HJC
TOTAL	$7,334.91	HJC

all of which shall bear interest at the rate of twelve (12%) per cent per year.

2. Plaintiff holds a lien for the total sum superior to any claim or estate of Defendant, ROGER F. QUISENBERRY, on the following-described property in Palm Beach County, Florida:

> Lot 6, Bock 43, Plat No. 2, HYPOLUXO VILLAGE, an unrecorded plat, being a part of Section 6, Township 45 South, Range 43 East, and described by metes and bounds as follows:
>
> The North 85 feet of the South 2030 feet of the West 130 feet of that property described in Deed Book 1122, page 494, Palm Beach County Records, LESS the East 20 feet thereof for road purposes, and subject to easement for drainage over the West 22 feet thereof, the description of he property in Deed Book 1122, page 494, being as follows:
>
> Begin at the Northeast corner of Section 6, Township 45 South, Range 43 East; thence South 0°10'40" West along the East line of said Section 6, a distance of 40 feet to a point in the South right-of-way line of Lake Worth Drainage District Lateral No. 16, and the Point of Beginning; thence continue So. 0°10'40" West along the East line of said Section 6, a distance of 5303.57 feet to a point in the North right-of-way line of Hypoluxo Road as now laid out and in use, said point being 65 feet North of and at right angles to the South line of said Section 6; thence So. 8°54'30" West along said North right-of-way line of Hypoluxo Road which is parallel to and 65 feet North of and at right angles to the South line of said Section 6, a distance of 2717.19 feet

to a point; thence No. 0°19'30" West, a distance of 2526.68 feet to a point; thence No. 67°28'30" East a distance of 200.28 feet to a point; thence North a distance of 2632.72 feet to a point in the South right-of-way line of L.W.D.D. Lateral No. 16; thence So. 89°46'20" E along the South right-of-way line of said Lateral No. 16, a distance of 31.85 feet to a point; thence So. 89°59' East along the South right-of-way line of said Lateral No. 16, a distance of 2530.90 feet to the point of beginning.

3. If the total sum with interest at the rate described in Paragraph 1 and all costs accrued subsequent to this judgment are not paid, the Clerk of this Court shall sell the property at public sale on August 25, 1994, at 11:00 a.m. to the highest bidder for cash, except as prescribed in Paragraph 4, in the lobby in the southwest corner of the first floor of the main Palm Beach County Courthouse, in West Palm Beach, Florida, in accordance with Section 45.031 of the Florida Statutes, free, clear and discharged of any and all claims, liens, encumbrances, rights, equities and interest of the Defendant, and all persons, firms or corporations claiming by, through or under the Defendant.

4. Plaintiff shall advance all subsequent costs of this action and shall be reimbursed for them by the Clerk if Plaintiff is not the purchaser of the property for sale. If Plaintiff is the purchaser, the Clerk shall credit Plaintiff's bid with the total sum with interest and costs accruing subsequent to this judgment, or such part of it, as is necessary to pay the bid in full.

5. On filing the Certificate of Title, the Clerk shall distribute the proceeds of the sale, so far as they are

sufficient, by paying: first, all of Plaintiff's costs; second, documentary stamps affixed to the certificate; third, Plaintiff's attorney's fees; forth, the total sum due to Plaintiff, less the items paid, plus interest at the rate prescribed in Paragraph 1 from this date to the date of the sale; and by retaining any remaining amount pending the further order of this Court.

6. On filing the Certificate of Title, Defendant and all persons claiming under or against him since the filing of the notice of Lis Pendens shall be foreclosed of all estate or claim in the property and the purchaser at the sale shall be let into possession of the property.

7. Jurisdiction of this action is retained to enter further orders that are proper, including without limitation, writs of possession and deficiency judgment.

DONE AND ORDERED at West Palm Beach, Palm Beach County, Florida, this 2nd day of August, 1994.

/s/ [Illegible]
CIRCUIT JUDGE
Case No. CL 93-1433 AH

Copies furnished to:

RICHARD T. STIERER, Esquire
LAW OFFICES OF RICHARD T. STIERER
224 Datura Street, Suite 1401
West Palm Beach, FL 33401

H. BRYANT SIMS, Esquire
7301 South Dixie Highway
West Palm Beach, FL 33405

AFFIDAVIT OF RICHARD T. STIERER

STATE OF FLORIDA)
COUNTY OF PALM BEACH)

Before me, the undersigned officer, duly authorized to administer oaths and take acknowledgments, personally appeared RICHARD T. STIERER, who, being by me first duly sworn, deposes and says:

1. That he is the attorney for the Plaintiff in the above-styled cause.

2. That the street address for the Plaintiff is 6017 Southern Road South, West Palm Beach, Florida.

3. That Plaintiff does not know the Social Security Number of Defendant, ROGER F. QUISENBERRY.

FURTHER AFFIANT SAYETH NAUGHT.

/s/ [Illegible]
RICHARD T. STIERER,
Esquire
Florida Bar No. 078328

Subscribed and sworn to before me this 1st day of August, 1994, by RICHARD T. STIERER, who is personally known to me and who did take an oath.

/s/ Lynn Cox
Signature of Notary Public

Lynn Cox
Printed Name of Notary Public

CC 379395
Commission number of Notary Public

[SEAL]

Lynn Cox
Notary Public, States of Florida
Commission No. CC 379395
My Commission Expires 05/31/98
1-800-3-NOTARY – Fla. Notary Service & Bonding Co.